IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4981 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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PRAVINKUMAR BALAPRASAD VARMA

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 4981 of 2002

MR AMIT M PANCHAL for Petitioner No. 1

MR HN SOMPURA, AGP, for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 1,2

..... for Respondent No. 3-4

MR AR THACKER for Respondent No. 5

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 26/12/2002

ORAL JUDGEMENT

Rule. Mr Sompura and Mr AR Thacker waive service of Rule. In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. This is a petition filed by a student who was fairly higher up in the merit list but who has remained without admission to a Diploma in Post Graduate Medical course of his choice and the seat has still remained vacant. Hence in spite of some opposition from the learned counsel for the respondents, the Court is constrained to pass this order.

3. First round of interviews for admissions to the Post Graduate Medical Courses at the MP Shah, Medical College, Jamnagar was held in December, 2001 at which interview the petitioner could not secure admission to any postgraduate course of his choice and he had no grievance about less meritorious candidate getting admitted to the PG course of the petitioner's choice. However, on account of reshuffling, second round of interviews was held on 11-2-2002. There is a controversy about this interview. According to the petitioner, he remained present at the time of interview but his presence was not recorded. According to the respondent authorities, the petitioner did not remain present when his name was called out and, therefore, the candidates below the petitioner in the merit list were offered available vacant seats. The petitioner has of course relied on the letter given by him on the same day at Annexure `D' to the petition stating that he had come for the interview and got his presence recorded in the morning but still his case was not considered. This, of course, raises a disputed question of fact and there is no reason why the respondent - authorities would deny the petitioner's presence if the petitioner was really present. May be, the petitioner had gone to the College but at the time when his name was called out for interview, the petitioner might not have been present at that particular point of time. The petitioner, therefore, filed the present petition on 9-5-2002.

4. The next round of interviews pursuant to reshuffling took place on 4-9-2002 when the petitioner was selected for admission to Diploma in Ophthalmology. The petitioner also paid up the tuition fees as well as the hostel fees on the same day and the Dean, Medical College, Jamnagar issued order dated 5-9-2002 notifying the names of the concerned students admitted to the College wherein the petitioner's name was shown in Diploma in Opthalmology. It is the petitioner's case

that upon getting such admission, the petitioner had submitted an application to the Dean to indicate that he would be accepting admission to Diploma in Ophthalmology without prejudice to his rights and contentions in the present petition, which was already filed on 9-5-2002. The petitioner has produced a copy of the said letter, about receipt of which also the learned counsel for the respondents have raised a dispute. In any case, the respondent - authorities did not cancel the petitioner's admission to Diploma in Ophthalmology.

It also appears that the next round of interviews pursuant to another reshuffling took place on 17-10-2002. It is the case of the Dean that no individual intimations were sent about the said interviews but only notice was placed on the notice board of the College inviting students to remain present at the time of interview on 17-10-2002.

5. It is the petitioner's case that he was not given any intimation about the said interview held on 17-10-2002 and also that a student called Dr. Jigna Dave who was earlier admitted to Diploma in Paediatrics in December, 2001 gave up her admission some time in January, 2002 but that seat was not offered at the time of interviews held on 11-2-2002, 4-9-2002 or even on 17-10-2002.

On the other hand, the case of the respondent authorities is that Dr Jigna Dave resigned only in July, 2002 and that, therefore, her seat was not offered at the time of interviews pursuant to reshuffling.

6. The unfortunate fact is that one seat in Diploma in Paediatrics has remained vacant and on the other hand, the petitioner for whom Diploma in Paediatrics was one of the chosen branches has remained without admission to the said course though the petitioner was granted admission to Diploma in Ophthalmology pursuant to the interviews held on 4-9-2002.

7. Mr Panchal for the petitioner submits that the vacant seat in Diploma in Paediatrics is even otherwise to go waste, the petitioner is prepared to be admitted to Diploma in Paediatrics and the petitioner is also prepared to take his chance, if his terms may not be granted in view of the admission at this stage.

8. Mr Thakkar learned counsel for the respondent University and Mr Sompura learned AGP oppose the request and submit that the admission cannot be granted in the

midst of a term. The learned counsel for the respondents place reliance on the decision of the Apex Court in Medical Council of India vs. Madhu Sigh, JT 2002 (7) SC 1.

9. Having heard the learned counsel for the parties, it appears to the Court that this is an unfortunate case where even though a vacant seat in Diploma in Paediatrics was available at the time of reshuffling interviews which have taken place on 4-9-2002, the same was not offered to the students who appeared at the interview, though Diploma in Paediatrics was one of the branches for which the petitioner had submitted his application earlier. According to the petitioner, Dr. Jigna Dave had resigned as far back as on 14-1-2002 as per No Demand Certificate No. MCLJ-C-17566-70 dated 9-7-2002 issued by the Dean, MP Shah Medical College, Jamnagar which reads as under:-

Sub:No Demand Certificate

You are requested to submit No Demand Certificate in respect of Dr. Jigna S Dave DCH student in the Department of Paediatrics completing tenure Resigned on 14-1-2002.

sd/-
Dean,
MP Shah Medical College,
Jamnagar,

To

The Prof. of Paediatrics/Library/Warden/H.O./ Medical record section last .. year.

According to the respondents, Dr Jigna Dave had resigned for the first time in July, 2002.

The Court need not to go into that controversy whether Dr Jigna Dave had resigned in January or July, 2002, as the fact remains that the seat was available in July, 2002.

According to the respondents, however, there were more meritorious students than the petitioner higher up in the merit list who were entitled to be considered for admission to Paediatrics. Though the Dean has stated in his reply affidavit dated 26-12-2002 that the name of Dr Jigna Dave and candidates more meritorious than the petitioner had appeared in the first merit list and the

petitioner's name had appeared in the second merit list, it is not the case of the Dean that candidates more meritorious than the petitioner were offered Diploma in Paediatrics or that any such more meritorious students were seeking admission to Diploma in Paediatrics.

10. In this set of circumstances, when the petitioner had already appeared at the interview held on 4-9-2002 pursuant to reshuffling without his having been offered, or any other meritorious student having been offered, the vacant seat in Diploma in Paediatrics, the Court is of the view that the interests of justice demand that the petitioner's case be considered for admission to vacant seat in Diploma in Paediatrics and that in this process, the Dean will also examine the claims of any more meritorious candidates who had applied for admission to Diploma in Paediatrics at the time of giving original application.

The respondents shall carry out this direction by 13th January, 2003.

11. Rule is made absolute to the above extent with no order as to costs.

Direct service is permitted.

(M.S. Shah,J)

zgs/-